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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121, et al.

**Prohibition of Smoking on Scheduled
Passenger Flights; Final Rules**

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****14 CFR Part 252**

[Docket No. OST-2000-7473; OST Docket No. 46783; Notice 90-5; OST Docket No. 44778; Notice 91-1]

RIN 2105-AC85; 2105-AB58

Smoking Aboard Aircraft

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; Disposition of comments; disposition of petition for rulemaking.

SUMMARY: The Department is amending its smoking rule to implement a recent statutory ban on smoking aboard aircraft in scheduled passenger interstate, intrastate and foreign air transportation. This rule is being issued in conjunction with a related FAA final rule on smoking that makes its rules consistent with the statutory ban. The FAA rule is published elsewhere in today's issue of the Federal Register.

This rule also confirms certain portions of the Department's 1990 interim final rule that incorporated a statutory ban on smoking aboard aircraft on almost all flight segments within the United States. The 1990 rule codified a blanket waiver concerning single-entity charters and made other clarifying changes. Finally, this rule responds to a petition for rulemaking to prohibit smoking aboard commercial aircraft

DATES: This final rule is effective June 4, 2000, in order to meet the effective date for the statutory ban on smoking.

FOR FURTHER INFORMATION CONTACT: Arnold Konheim, Office of the Assistant Secretary for Transportation Policy, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-4849.

SUPPLEMENTARY INFORMATION:**Electronic Access**

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docket number shown on the first page of this document. Then click on "search."

Background

Throughout this preamble and rule, we have used the terms "air carrier" and "foreign air carrier", as defined in 49 U.S.C. 40102, in which an "air carrier" is a citizen of the United States undertaking to provide air transportation, and a "foreign air carrier" is a person, not a citizen of the United States, undertaking to provide foreign air transportation.

In 1973, the Civil Aeronautics Board (CAB) adopted its first regulation (ER-800, 38 FR 12207, May 10, 1973) restricting smoking on air carrier flights. In subsequent years, the CAB and then the Office of the Secretary (OST) of the Department of Transportation, to which CAB functions were transferred on January 1, 1985, strengthened this rule in accord with public input, scientific studies and statutory requirements.

In its initial form, the rule required the separation of smoking passengers from no-smoking passengers. With each revision, the rule provided additional protections to nonsmokers, reflecting findings by the Surgeon General, the National Academy of Sciences, and the U.S. Environmental Protection Agency that exposure to environmental tobacco smoke is deleterious to health.

The increase in restrictions on smoking on air carrier flights also reflected global policy and public trends. In its 1992 session, the Assembly of the International Civil Aviation Organization passed Resolution A29-15, which called on its member nations "to take necessary measures as soon as possible to restrict smoking progressively on all international passenger flights." To reduce the health hazards to passengers and crew and to enhance aviation safety, the governments of Australia, Canada, New Zealand and the United States have since entered into an international agreement banning smoking on all non-stop flights of their airlines between the signatory countries. This ban applies to all locations within the aircraft, including the flight deck.

The Federal Aviation Administration (FAA) also regulates smoking to enhance safe air transportation and to implement statutory bans on smoking. The FAA has issued rules in furtherance of the statutory bans on smoking and the Department's ban on smoking contained in 14 CFR part 252. The FAA, under its safety mandate, has also issued rules to deal with the safety problems that can develop when people on board aircraft violate the statutory ban on smoking

and try to conceal their smoking. For example, smoke detectors are required in lavatories because sometimes people try to hide cigarette butts in paper-towel refuse compartments that could lead to a fire in flight.

The statute on which the current rules are based is Public Law 101-164, which was enacted in 1989 and reads as follows:

* * * it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight segment in air transportation or intrastate air transportation, which is—

(i) between any two points within Puerto Rico, the United States Virgin Islands, the District of Columbia, or any state of the United States (other than Alaska and Hawaii), or between any point in any one of the aforesaid jurisdictions (other than Alaska and Hawaii) and any point in any other of such jurisdictions;

(ii) within the State of Alaska or within the State of Hawaii; or

(iii) scheduled for 6 hours or less in duration, and between any point described in clause (1) and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

The current 14 CFR part 252, which applies to air carriers and foreign air carriers, incorporates these statutory requirements and also requires air carriers to ban smoking when the ventilation system is not fully functioning, when a plane is on the ground, and on all aircraft with less than 30 seats. It also requires air carriers to ban smoking of cigars and pipes. In addition, on flights where smoking is not banned, the rule provides that each air carrier furnish any confirmed passenger who checks in on time a seat in a no-smoking section, if requested. The air carrier must expand the no-smoking section to accommodate all qualified passengers and must make special provision to ensure that, if a no-smoking section is placed between the smoking sections, the nonsmoking passengers are not "unreasonably burdened." Air carriers are otherwise free to ban smoking if they choose.

In fact, all air carriers ban smoking on all scheduled passenger flights, and most foreign air carriers ban smoking. At present, 97.7 percent of all scheduled passenger flight segments to and from the United States are smoke-free.

Recent Statutory Changes

On April 5, 2000, President Clinton signed H.R. 1000 (P.L. 106-181), the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, containing the following section:

Sec. 708. Prohibitions Against Smoking on Scheduled Flights

(a) In General * * *

41706. Prohibitions against smoking on scheduled flights.

(a) Smoking Prohibition in Intrastate and Interstate Air Transportation: An individual may not smoke in an aircraft in scheduled passenger interstate air transportation or scheduled passenger intrastate air transportation.

(b) Smoking Prohibition in Foreign Air Transportation: The Secretary of Transportation shall require all air carriers and foreign air carriers to prohibit smoking in any aircraft in scheduled passenger foreign air transportation.

(c) Limitation on Applicability:

(1) In general: If a foreign government objects to the application of subsection (b) on the basis that subsection (b) provides for an extraterritorial application of the laws of the United States, the Secretary shall waive the application of subsection (b) to a foreign air carrier licensed by that foreign government at such time as an alternative prohibition negotiated under paragraph (2) becomes effective and is enforced by the Secretary.

(2) Alternative prohibition: If, pursuant to paragraph (1), a foreign government objects to the prohibition under subsection (b), the Secretary shall enter into bilateral negotiations with the objecting foreign government to provide for an alternative smoking prohibition.

(d) Regulations: The Secretary shall prescribe such regulations as are necessary to carry out this section.

(b) *Effective Date*: The amendment made by subsection (a) shall take effect on the date that is 60 days after the date of enactment of this Act.

Final Rule

The Office of the Secretary's current smoking regulations are contained in 14 CFR Part 252 and require that air carriers and foreign air carriers prohibit smoking on certain flights. This rule amends Part 252 to implement the recent statutory ban on smoking for air carriers and foreign air carriers. This rule bans smoking on all scheduled passenger flights of air carriers, and on all scheduled passenger flight segments of foreign air carriers (1) between points in the U.S. and (2) between the U.S. and foreign points. The statutory ban on passengers smoking on aircraft in interstate and intrastate air transportation is self-executing and goes into effect on the 60th day after enactment of the statute whether or not we update this regulation. Since this rule essentially restates a statutory mandate with an imminent deadline, seeking prior notice and comment on it is unnecessary under 5 U.S.C. 553(b).

The rule also incorporates the waiver provision for foreign air carriers under criteria provided in the statute. That is, a foreign government can object to the rule as an extraterritorial application of U.S. laws and request a waiver of the requirements, once bilateral negotiations with the U.S. have put in

place an alternative smoking prohibition.

Smoking on the flight deck is now prohibited by the government only on scheduled non-stop flights between Australia, Canada, New Zealand and the United States. Consistent with the recent statute, the new section 252.8 in the rule now bans smoking in all locations within the aircraft, including the flight deck. This new ban applies to all air carrier and foreign air carrier flights covered by the rule. The rule does not change the current requirement in §252.11 that air carriers prohibit smoking whenever their aircraft are on the ground. The ban, as it applies to foreign air carriers, is less extensive. In particular, it is flight-specific, applying only from the time the aircraft begins enplaning passengers to the time that all passengers complete deplaning.

The recent statutory ban on smoking applies to individual passengers and flight crew as well as to air carriers and foreign air carriers. This rule applies only to air carriers and foreign air carriers. The companion FAA rule published elsewhere in today's **Federal Register** implements the statutory ban on smoking by such individuals.

We have made nonsubstantive changes to Part 252 to use the terms "air carrier" and "foreign air carrier", as defined in 49 USC 40102, in all sections, changed and otherwise unchanged. As stated above, an "air carrier" is a citizen of the United States undertaking to provide air transportation, and a "foreign air carrier" is a person, not a citizen of the United States, undertaking to provide foreign air transportation.

Effective Date

The Administrative Procedure Act, 5 U.S.C. 553(d)(3), states that regulations may not go into effect less than 30 days after publication except where good cause is shown. The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century directs the Secretary of Transportation to issue regulations to prohibit smoking on scheduled flights within 60 days of its enactment. Therefore, we must make this amendment effective by June 4, 2000. We have determined that good cause exists to make this amendment effective on June 4, 2000, rather than 30 days after publication. All air carrier flights and nearly 98 percent of foreign air carrier flights to and from the U.S. already meet this requirement. As a result, making the rule effective in less than 30 days after publication will burden very few foreign air carriers.

Disposition of Comments to the 1990 Interim Final Rule (Docket No. 46783)

On February 13, 1990, the Office of the Secretary published an interim final rule in the **Federal Register** (55 FR 4991) implementing Public Law 101-164. That act banned smoking on most scheduled airline flight segments within the United States. The rule also codified a blanket waiver concerning single-entity charters and made other clarifying changes. In addition, the interim rule requested comments on changing the applicability of section 252.13 from "less than 30 seats" to "30 seats or less" in order to conform to the terminology used in the Federal Aviation Administration's (FAA) carrier operating rules found in 14 CFR Parts 135 and 121. We did not receive any comments on the proposed change. Accordingly, this final rule adopts the change.

We received four comments in response to the interim final rule. One commenter, a private citizen, expressed his opposition to the act because it had the effect of "alleviat[ing] any fiscal responsibilities the airline industry may encounter" to install more efficient airplane ventilation systems. However, the smoking ban should improve the efficiency of existing ventilation systems.

Sun Country Airlines suggested that the smoking ban be extended to all carriers, whether scheduled or charter operations. Both the 1989 and 2000 legislation apply only to "scheduled flights." Both rules simply implement the legislation. Nevertheless, there has never been a requirement to permit smoking aboard aircraft, and charter operators have always been free to ban smoking on any or all of their flights.

Another private citizen commented that smokers also have rights and suggested that proper ventilation would solve the problem of "germ ridden" air. The Tobacco Institute [TI], a trade association of cigarette manufacturers, stated that the Department's "broad statements [in the interim final rule's preamble] as to 'rights' of smokers and nonsmokers" is "neither necessary nor supported by the legislation." DOT's use of the word "rights" merely emphasizes that smokers do not have the right to demand that an airline provide a "smoking seat." We did not intend the discussion in the interim final rule's preamble to be a policy statement of the overall rights of smokers versus nonsmokers.

TI also asserted that air carriers would "likely suffer competitive disadvantage" if smoking is banned on those air carriers' international flights. Finally, TI

asserted that the rule exempting "single-entity charters" should avoid imposing unnecessary administrative burdens on charter operators. Specifically, TI believes that the advance notice provisions of §252.19 preclude "administrative flexibility" for charter operators. The advance notice provisions of §252.19 merely codified a blanket waiver for single-entity charter operators that has been in effect since 1982 with no serious problems. In addition, we note that no charter operator has commented in opposition to this section.

Petition of David James Biss (Docket No. 44778)

On April 7, 1987, Mr. David Biss petitioned the Department to ban all smoking on passenger-carrying commercial aircraft operating under the jurisdiction of the DOT. This final rule addresses most of Mr. Biss' concerns. Accordingly, this rule disposes of his petition for rulemaking.

Regulatory Process Matters

This rule is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that order. This rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation, 44 FR 11034, (February 26, 1979), because it primarily implements a statutory directive. This rule is expected to have a minimal economic effect, therefore further regulatory evaluation is not necessary.

Regulatory Assessment

The additional number of flights on which airlines will be required to ban all smoking will be a very small percentage of all those between the United States and foreign countries. A total of 159 air carriers and foreign air carriers performed departures from the United States to foreign countries in 1998. Of these, 35 were certificated in the U.S., and none of them permits smoking. Of 124 foreign air carriers, only 17 permitted smoking on any flight. Except for Aeroflot and Olympic Airways, all major European airlines ban smoking. So do most of those in other regions, excepting certain foreign air carriers in South and Central America, Asia, and the Middle East. Out of 191,000 departures from the U.S. by foreign air carriers, only 11,000, or 5.4 percent, permitted smoking in 1998. Since more than half of the departures are performed by air carriers, this represents an average of 2.3 percent of all departures. Even this figure probably

overstates the proportion of passengers newly affected by this legislation and rule, because the majority of such flights are by smaller airlines on less densely traveled routes. For example, 2,800 departures are performed by the Mexican carrier Aero California, which operates DC-9 aircraft seating fewer than 100 passengers.

The benefits of protection against environmental tobacco smoke in aircraft include improved comfort of passengers and crew, as well as lower risk of both acute and chronic adverse health impacts associated with increased incidence of respiratory illnesses, lung cancer, heart disease, and fetal defects for those repeatedly exposed over a long period. Safety will be augmented by reduced risk of fire, preventing impairment of the alertness of crews resulting from smoke intoxication, and improved reliability of equipment that will not be subjected to accumulated deposits of smoke residues. It is possible that smokers will suffer some discomfort through being prevented from smoking during the flight, but they too will receive the stated health and safety benefits.

The airlines required to discontinue their present policies of permitting smoking in flight will benefit from reduced maintenance costs for cleaning and replacing upholstery, servicing no-smoking lights, and emptying ashtrays. They will suffer no loss of revenue through diversion of smoking passengers; because there are no close substitutes for scheduled airline flights in international transportation, and all flights will be covered by the same no-smoking rule.

Small Business Impact

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller air carriers.

All small air carriers already meet the requirements of this rule, since all air carriers already ban smoking on all scheduled passenger service. This rule contains no direct reporting or record-keeping requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with this rule. Therefore, I certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this regulation will not have a

significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law 96-511, 44 U.S.C. Chapter 35.

Federalism Implications

We have reviewed this rule in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule will not limit the policymaking discretion of the States. Nothing in it would directly preempt any State law or regulation. Because the rule will have no significant effect on State or local governments, no consultations with State and local governments on this rule were necessary and it does not warrant the preparation of a Federalism Assessment.

National Environmental Policy Act (NEPA)

Issuing this rule is exempt from any requirement to prepare an environmental impact statement under NEPA because the Department's action is ministerial without discretion. In addition, the department has determined that this rule will not have any significant impact on the quality of the human environment. Smoking within an aircraft has a negligible effect on the environment outside of the aircraft and its elimination would also have a negligible effect.

Within the aircraft, smoking can result in non-smoking passengers and crew being exposed to environmental tobacco smoke (ETS). A study by the Department showed that ETS contaminants are not restricted to the smoking section of an aircraft but are found throughout the cabin, particularly in the no-smoking area closest to the smoking section. The effect of a smoking ban would be to reduce the health risk to passengers and crew from exposure to ETS. It would also enhance aviation safety by reducing the risk of (a) fire, (b) failure of compartments holding oxygen masks to open because of the accumulation of tobacco tar residue and (c) degradation of the crew's ability to function properly.

The issuance of a rule banning smoking on all scheduled passenger flights to and from this country by foreign air carriers and on all

international scheduled passenger flights of air carriers would have no adverse effect on the environment. In fact, the rule would improve air quality within the aircraft, reduce the risk of adverse health effects, and enhance aviation safety.

Therefore, the department has found that the rule will have no significant adverse economic impact. A copy of the environmental assessment has been filed in the public docket.

List of Subjects in 14 CFR Part 252

Air carriers, Aircraft, Consumer protection, Foreign air carriers, smoking.

Accordingly, the Office of the Secretary of the U.S. Department of Transportation revises 14 CFR part 252 to read as follows:

PART 252—SMOKING ABOARD AIRCRAFT

Sec.

- 252.1 Purpose.
- 252.2 Applicability.
- 252.3 Smoking ban: air carriers
- 252.5 Smoking ban: foreign air carriers.
- 252.7 No-smoking sections.
- 252.8 Extent of smoking restrictions 252.9 Ventilation systems.
- 252.11 Aircraft on the ground.
- 252.13 Small aircraft.
- 252.15 Cigars and pipes.
- 252.17 Enforcement.
- 252.19 Single-entity charters.

Authority: Pub. L 101-164; 49 U.S.C. 40102, 40109, 40113, 41701, 41702, 41706, as amended by section 708 of Pub. L 106-181, 41711, and 46301.

Cross Reference: For smoking rules of the Federal Aviation Administration, see 14 CFR 121.317(c), 121.571(a)(1)(i), 129.29, 135.117(a)(1), and 135.127(a).

§ 252.1 Purpose.

This part implements a ban on smoking of tobacco products on air carrier and foreign air carrier flights in scheduled intrastate, interstate and foreign air transportation, as required by 49 USC 41706. It also addresses smoking on charter flights. Nothing in this regulation shall be deemed to require air carriers or foreign air carriers to permit the smoking of tobacco products aboard aircraft.

Note to § 252.1: As defined in 49 U.S.C. 40102, an "air carrier" is a citizen of the United States undertaking to provide air transportation, and a "foreign air carrier" is a person, not a citizen of the United States, undertaking to provide foreign air transportation.

§ 252.2 Applicability.

This part applies to all operations of air carriers engaged in interstate, intrastate and foreign air transportation

and to foreign air carriers engaged in foreign air transportation, but does not apply to the on-demand services of air taxi operators.

§ 252.3 Smoking ban: air carriers.

Air carriers shall prohibit smoking on all scheduled passenger flights.

§ 252.5 Smoking ban: foreign air carriers.

(a) Foreign air carriers shall prohibit smoking on all scheduled passenger flight segments:

- (1) Between points in the United States, and
- (2) Between the U.S. and any foreign point.

(b) A foreign government objecting to the application of paragraph (a) of this section on the basis that paragraph (a) provides for extraterritorial application of the laws of the United States may request and obtain a waiver of paragraph (a) from the Assistant Secretary of Transportation for Transportation Policy, provided that an alternative smoking prohibition resulting from bilateral negotiations is in effect.

§ 252.7 No-smoking sections.

(a) Except as provided in paragraph (b) of this section, air carriers operating nonstop flight segments to which §§ 252.3 and 252.13 do not apply shall provide, at a minimum:

- (1) A no-smoking section for each class of service;
- (2) A sufficient number of seats in each no-smoking section to accommodate all persons in that class of service who wish to be seated there;
- (3) Expansion of no-smoking sections to meet passenger demand; and
- (4) Special provisions to ensure that if a no-smoking section is placed between smoking sections, the nonsmoking passengers are not unreasonably burdened.

(b) On flights for which passengers may make confirmed reservations and on which seats are assigned before boarding, an air carrier need not provide a seat in a no-smoking section to a passenger who has not met the carrier's requirements as to time and method of obtaining a seat on the flight, or who does not have a confirmed reservation. If a seat is available in the established no-smoking section, however, an air carrier shall seat there any enplaning passenger who so requests, regardless of boarding time or reservation status.

§ 252.8 Extent of smoking restrictions.

The restrictions on smoking described in §§ 252.3 through 252.7 shall apply to all locations within the aircraft.

§ 252.9 Ventilation systems.

Air carriers shall prohibit smoking whenever the ventilation system is not fully functioning. Fully functioning for this purpose means operating so as to provide the level and quality of ventilation specified and designed by the manufacturer for the number of persons currently in the passenger compartment.

§ 252.11 Aircraft on the ground.

(a) Air carriers shall prohibit smoking whenever the aircraft is on the ground.

(b) With respect to the restrictions on smoking described in § 252.5, foreign air carriers shall prohibit smoking from the time an aircraft begins enplaning passengers until the time passengers complete deplaning.

§ 252.13 Small aircraft.

Air carriers shall prohibit smoking on aircraft designed to have a passenger capacity of 30 or fewer seats.

Note to § 252.13: This section, like the rest of this part, does not apply to on-demand services of air taxi operators; see § 252.2 in this part.

§ 252.15 Cigars and pipes.

Air carriers shall prohibit the smoking of cigars and pipes aboard aircraft.

§ 252.17 Enforcement.

Air carriers and foreign air carriers shall take such action as is necessary to ensure that smoking by passengers or crew is not permitted in the passenger cabin or lavatories on no-smoking flight segments. Air carriers shall take such action as is necessary to ensure that smoking by passengers or crew is not permitted in no-smoking sections or at other times or places where smoking is prohibited by this part, and to maintain required separation of passengers in smoking and no-smoking areas.

§ 252.19 Single-entity charters.

On single-entity charters operated pursuant to §§ 207.50 or 208.300 of this title, air carriers need not comply with the procedures of this part 252 if such a request is made by the charterer, provided that each passenger on such flights is given notice of the smoking procedures for the flight at the time he or she first makes arrangements to take the flight.

Issued in Washington, D.C. on June 2, 2000, under authority delegated by 49 CFR 1.56a (h)2.

Robert S. Goldner,

Acting Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 00-14480 Filed 6-6-00; 3:32 pm]

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DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 121, 129, and 135**

[Docket No. FAA-2000-7467; Amendment Nos. 121-277, 129-29 and 135-76]

RIN 2120-AH04

Prohibition of Smoking on Scheduled Passenger Flights

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending its regulations to bring them into conformance with recent legislation prohibiting smoking aboard all aircraft in scheduled passenger interstate or intrastate air transportation and scheduled passenger foreign air transportation. This rule is being issued with a related DOT rule on smoking, which is published elsewhere in today's issue.

DATES: Effective June 4, 2000. See also "Discussion of Dates" under

SUPPLEMENTARY INFORMATION.**FOR FURTHER INFORMATION CONTACT:**

Alberta Brown, Aviation Safety Inspector, AFS-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8321.

SUPPLEMENTARY INFORMATION:**Availability of Final Rules**

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Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed

Rulemaking Distribution System, which describes the application procedure.

Small Entity Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Internet users can find information on SBREFA on the FAA's web page at <http://www.faa.gov/avr/arm/sbrefa/htm> and may send electronic inquiries to the following internet address: 9-AWA-SBREFA@faa.gov.

Background

On April 5, 2000, Congress enacted Public Law 106-181, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. Among other things, section 708 of Public Law 106-181 amended 49 U.S.C. 41706 by directing the Secretary of Transportation to "require all air carriers and foreign air carriers to prohibit smoking in any aircraft in scheduled passenger foreign air transportation." The legislation also stated, "If a foreign government objects to the application [of the smoking prohibition in foreign air transportation] on the basis that [it] provides for an extraterritorial application of the laws of the United States, the Secretary shall waive the application of [the prohibition] to a foreign air carrier licensed by that foreign government at such time as an alternative prohibition negotiated * * * becomes effective and is enforced by the Secretary." In addition, the legislation stated, "* * * the Secretary shall enter into bilateral negotiations with the objecting foreign government to provide for an alternative smoking prohibition."

Previously, under the Office of the Secretary's rules (14 CFR part 252), smoking was prohibited for the following scheduled flight segments of air carriers:

- Between any two points within Puerto Rico, the United States Virgin Islands, the District of Columbia, or any State of the United States (other than Alaska or Hawaii) or between any two points in any one of the above-mentioned jurisdictions (other than Alaska or Hawaii);
- Within the State of Alaska or within the State of Hawaii; or
- Scheduled in the current Worldwide or North American Edition of the *Official Airline Guide* for 6 hours or less in duration and between any point listed in [the first bulleted paragraph above] and any point in

Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

The Office of the Secretary's regulations applied predominantly to smoking in the passenger cabin, but smoking on the flight deck was permitted under the FAA's rules if authorized by the pilot in command for any part of the operation, except during airplane movement on the surface, takeoff, or landing. (See former 14 CFR 121.317(g).) However, since 1994, an international agreement has prohibited smoking on the flight deck of specified international flights (e.g., certain flights between the United States and Australia). Many air carriers have voluntarily limited smoking in response to customer request. For example, at least one major air carrier has banned smoking on all airline property, including airplanes, crew buses, vehicles, and buildings.

Today's final rule is a direct result of legislative amendments to 49 U.S.C. 41706. Because Congress mandated these changes, good cause exists for the Department of Transportation to amend its rules concerning smoking (14 CFR part 252) and for the FAA to make conforming amendments to its own rules. A legislative mandate of this nature makes it "unnecessary" to provide notice and comment procedures. (See 5 U.S.C. 553 (b)(B).)

Section-by-Section Analysis

Section 121.317—Passenger information requirements, smoking prohibitions, and additional seat belt requirements—The heading is being revised to reflect the fact that the section contains smoking prohibitions in addition to passenger information and seat belt requirements.

Paragraph (c) is being revised in its entirety to apply to situations in which the new legislation and 14 CFR part 252 ban smoking. For those operations, no person may operate an airplane unless either the "No Smoking" passenger information sign is lighted for the entire flight, or one or more "No Smoking" placards meeting the requirements of 14 CFR 25.1541 are posted for the entire flight segment. Thus, paragraph (c) itself does not ban smoking on certain flights. Instead, the paragraph informs people who operate airplanes in part 121 operations that when smoking is banned for the entire flight segment (e.g., on those flights identified in 14 CFR part 252), then either the "No Smoking" passenger information signs must be lighted, or "No Smoking" placards must be posted.

Other situations exist in which the new legislation and recent amendments to 14 CFR part 252 do not ban smoking.

In those situations, the FAA's long-standing rules have banned, and continue to ban, smoking at certain times. For example, in a part 121 supplemental operation (either an all-cargo operation or a passenger-carrying operation in which the air carrier/commercial operator did not hold out a schedule to the public), the recent legislative ban on smoking and the recent amendments to 14 CFR part 252 do not apply because it applies only on scheduled passenger flights. On supplemental operations, smoking has been banned, and continues to be banned, for example, "during any movement [of the airplane] on the surface, for each takeoff, for each landing, and at any other time considered necessary by the pilot in command." However, for supplemental operations, the legislation does not ban smoking in the passenger cabin during en route phases of the flight, unless the pilot in command considers it necessary to turn on the "No Smoking" signs. For all part 121, part 129, and part 135 operations, smoking has been, and continues to be, prohibited in any aircraft lavatory. The FAA's ban on smoking in lavatories applies regardless of whether the 14 CFR part 252 smoking ban applies to the entire flight segment or whether it is, for example, a part 121 supplemental or part 135 on-demand operation where the operator may permit smoking during an en route segment of the flight in some circumstances. (See 14 CFR 121.317 (h), 129.29 (a), and 135.127 (c).) These operators of supplemental and on-demand flights must keep in mind that there are additional smoking prohibitions for "small aircraft" specified in 14 CFR 252.13.

Also under newly revised § 121.317 (c), the word "aircraft" is being changed to "airplane" because part 121 has only airplanes, and former paragraphs (c)(1), (c)(2), and (c)(3) are being deleted since these provisions reflect the former statutory provisions.

Paragraph (g) of § 121.317 is being revised to identify certain kinds of operations conducted under part 121 where smoking has been neither banned by the recent legislative amendments nor changed by 14 CFR part 252. The revised paragraph specifies the situations during which a pilot in command permits smoking on the flight deck. It is important to explain what newly revised (g) does not do. It does not apply in those situations where Congress banned smoking on the entire aircraft. For example, the legislation and recently amended 14 CFR part 252 ban smoking on aircraft in scheduled passenger interstate air transportation or

scheduled passenger intrastate air transportation. Thus, for purposes of part 121, smoking is banned for the entire flight segment on the entire airplane (including the flight deck) on most part 121 domestic operations.

Smoking is banned on all part 121 operations that are engaged in "interstate air transportation" operations, as that term is defined in 49 U.S.C. 40102(a)(25). However, some part 121 domestic operations that are conducted entirely within a State of the United States are not covered by the legislative ban on smoking. Congress provided that a person may not smoke in an aircraft in scheduled passenger "intrastate air transportation." The term "intrastate air transportation" is defined in 49 U.S.C. 40102(a)(27). To meet the statutory definition of "intrastate air transportation," the transportation must be provided by a common carrier for compensation or hire entirely within one State, and it must be done in a "turbojet powered aircraft capable of carrying at least 30 passengers." (See 49 U.S.C. 40102 (a)(27).) Therefore, if a part 121 domestic operation or a part 135 commuter operation is conducted entirely within one State but it is conducted with a turbojet aircraft that is not capable of carrying at least 30 passengers, or is conducted with an aircraft that is not turbojet powered, then it is not engaged in the statutory "intrastate air transportation." Thus, the legislative ban on smoking does not apply to those operations; however, a Department of Transportation ban on smoking in certain "small aircraft" may apply. (See 14 CFR 252.13.) On those domestic operations and commuter operations that are not covered by the legislative ban, by the Department of Transportation's 14 CFR part 252 ban, or by international agreement, the former regulations and the revised regulations permit the pilot in command to authorize smoking on the flight deck (if it is physically separated from the passenger compartment), except during aircraft movement on the surface or during takeoff or landing. However, when the 14 CFR part 252 ban applies, it also prohibits smoking whenever the aircraft is on the ground. The pilot in command may authorize smoking on the flight deck on flights not covered by the legislative ban or 14 CFR part 252, even when the "No Smoking" signs are lighted or when the "No Smoking" placards are posted, except during the aircraft movement specified in the previous sentence.

It should also be noted that the legislative ban does not apply to all-cargo operations and to "unscheduled" passenger-carrying operations, and thus,

does not apply to most part 121 supplemental operations and most part 135 on-demand operations. There are a few scheduled passenger-carrying operations that are defined in § 119.3 as "On-demand operations." (See paragraph (2) of the definition of "On-demand operation" in § 119.3.) The few scheduled passenger-carrying operations that are classified by part 119 as "on-demand" are subject to the legislative ban and the 14 CFR part 252 ban, provided the flights are either scheduled passenger flights in interstate air transportation, or the flights are scheduled passenger intrastate air transportation operations conducted in turbojet powered aircraft capable of carrying at least 30 passengers. Therefore, in revised paragraph (g), the FAA is carrying forward the authority for the pilot in command to permit smoking on the flight deck (if it is physically separated from the passenger compartment) in certain situations (even when the "No Smoking" signs are lighted) for those flights not covered by the legislative ban or the 14 CFR part 252 ban on smoking. One situation in which the pilot in command does not have the authority to permit smoking on the flight deck is when the aircraft is moving on the surface, or during takeoff or landing.

Finally, because scheduled passenger-carrying public charter operations under 14 CFR part 380 are subject to the legislative ban on smoking, and because those operations are also subject to the 14 CFR part 252 ban on smoking, the FAA must make it clear in its rules that the pilots in command of aircraft in those operations do not have the authority to permit smoking on the flight deck. Scheduled passenger-carrying public charter operations conducted under 14 CFR part 380 are treated as Supplemental Operations under part 121, or On-Demand Operations under part 135, even though the operator may well hold out to the public a departure location, departure time, and arrival location, which satisfies the definition of "scheduled operations" in § 119.3.

Section 129.29 Smoking prohibitions—This section is being revised in its entirety to prohibit smoking by anyone anywhere on an aircraft during scheduled passenger foreign air transportation or during any scheduled passenger interstate or intrastate air transportation. The revised section also includes the words "unless authorized by the Secretary of Transportation," because the legislation states that foreign governments that object to the ban may negotiate alternatives with the Secretary.

Section 135.127 Passenger information requirements and smoking prohibitions—The heading of the section is being revised to include a reference to smoking prohibitions.

Paragraph (a) is being revised in its entirety to require that smoking by anyone at any time during any scheduled flight is prohibited and to specify the methods by which passengers may be notified of no smoking.

Paragraph (b) is being revised in a manner similar to the revisions to § 121.317(g). See discussion of § 121.317(g) above, except that part 121 refers only to airplanes, while part 135 refers to aircraft.

Discussion of Dates

Section 708 of Public Law 106–181 states that the amendment to 49 U.S.C. 41706 is effective on June 4, 2000 (60 days after the date of enactment of the legislation). This final rule, which implements conforming amendments to the FAA's regulations, is effective on June 4, 2000. Because Congress mandated these changes, good cause exists for the Department of Transportation to amend its rules concerning smoking (14 CFR part 252) and for the FAA to make conforming amendments to its rules. A legislative mandate makes it “unnecessary” to provide for notice and comment procedures. (See 5 U.S.C. 553 (b)(B).)

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this rule.

International Compatibility

In keeping with U.S. obligations under the convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA reviewed ICAO Standards and Recommended Practices but did not find corresponding provisions that differ from this rulemaking action.

In its 1992 session, the ICAO Assembly passed Resolution A29–15 concerning smoking on international passenger flights. The resolution called on member states to take appropriate measures “to restrict smoking progressively on all international flights.” To reduce health hazards to passengers and crew and to enhance

aviation safety, the governments of Australia, Canada, New Zealand, and the United States have since entered into an international agreement banning smoking on their airlines during all non-stop flights between those countries. This international agreement applies to all locations within an aircraft in passenger operation, including the flight deck, cabin, and lavatories.

Economic Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined this rule: (1) Has benefits that do justify its costs, is not a “significant regulatory action,” as defined in the Executive Order, and is “significant,” as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) reduces barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses are summarized below.

This rule incorporates the provisions of 49 U.S.C. 41706 (as amended by section 708 of Pub. L. 106–181) into 14 CFR Parts 121, 129, and 135, and any costs and benefits that will result from this rulemaking are attributable to the legislation. Former Department of Transportation provisions allowing smoking on flights over 6 hours in duration are superseded by the new legislation. In addition, if a foreign air carrier's host government objects to these provisions and comments to the

Secretary of Transportation, the Secretary will negotiate the issue.

The methods that will be used to inform passengers of the smoking prohibition are the lighted passenger information sign or posted “No Smoking” placards, and the required safety briefing. The costs involved with this rule, which are attributable to the legislation, are minor, as a smoking prohibition has been in place domestically for a decade, and some air carriers have already banned smoking on all flights without regulation.

Air carriers will realize some savings from this rule, which are attributable to the legislation. There will be less wear and tear on the ventilation systems on newly covered aircraft, and each of these aircraft may have to be cleaned less often. Air carriers will not have to deal with the logistics of smoking versus no-smoking sections. In addition, there are health benefits to people from prohibiting smoking aboard aircraft.

The FAA concludes that there are some economic benefits to the air carriers from prohibiting smoking on these newly included flights. Congress, which reflects the will of the American public, has also determined that the smoking ban is in the best interest of the nation. As stated above, this rule directly reflects legislative requirements and therefore the associated minor costs and benefits occur as a result of the legislation rather than the rule.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (the Act) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small

entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

For this rule, the small entity group is considered to be part 121, part 129, and part 135 air carriers or commercial operators (Standard Industrial Classification Code (SIC) 4512). As noted above, the costs for each air carrier and commercial operator will be minimal.

The FAA conducted the required review of this rule and determined that it will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the states or the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government. Therefore, the

FAA has determined that this final rule does not have federalism implications.

Unfunded Mandates Determination

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pubic Law 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pubic Law 94-163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety.

14 CFR Part 129

Air carriers, Aircraft, Airports, Aviation safety.

14 CFR Part 135

Aircraft, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends title 14 CFR parts 121, 129, and 135 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 46105.

2. Amend § 121.317 by revising the section heading and paragraphs (c) and (g) to read as follows:

§ 121.317 Passenger information requirements, smoking prohibitions, and additional seat belt requirements.

* * * * *

(c) No person may operate an airplane on a flight on which smoking is prohibited by part 252 of this title unless either the "No Smoking" passenger information signs are lighted during the entire flight, or one or more "No Smoking" placards meeting the requirements of § 25.1541 of this chapter are posted during the entire flight segment. If both the lighted signs and the placards are used, the signs must remain lighted during the entire flight segment.

* * * * *

(g) No person may smoke while a "No Smoking" sign is lighted or while "No Smoking" placards are posted, except as follows:

(1) *Supplemental operations.* The pilot in command of an airplane engaged in a supplemental operation may authorize smoking on the flight deck (if it is physically separated from any passenger compartment), but not in any of the following situations:

(i) During airplane movement on the surface or during takeoff or landing;

(ii) During scheduled passenger-carrying public charter operations conducted under part 380 of this title; or

(iii) During any operation where smoking is prohibited by part 252 of this title or by international agreement.

(2) *Certain intrastate domestic operations.* Except during airplane movement on the surface or during takeoff or landing, a pilot in command of an airplane engaged in a domestic operation may authorize smoking on the flight deck (if it is physically separated from the passenger compartment) if—

(i) Smoking on the flight deck is not otherwise prohibited by part 252 of this title;

(ii) The flight is conducted entirely within the same State of the United States (a flight from one place in Hawaii to another place in Hawaii through the airspace over a place outside of Hawaii

is not entirely within the same State); and

(iii) The airplane is either not turbojet-powered or the airplane is not capable of carrying at least 30 passengers.

* * * * *

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

3. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 41706, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

4. Revise § 129.29 to read as follows:

§ 129.29 Smoking prohibitions.

(a) No person may smoke and no operator may permit smoking in any aircraft lavatory.

(b) Unless otherwise authorized by the Secretary of Transportation, no person may smoke and no operator may permit smoking anywhere on the aircraft (including the passenger cabin and the flight deck) during scheduled passenger foreign air transportation or during any scheduled passenger interstate or intrastate air transportation.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

5. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

6. Amend § 135.127 by revising the heading and paragraphs (a) and (b) to read as follows:

§ 135.127 Passenger information requirements and smoking prohibitions.

(a) No person may conduct a scheduled flight on which smoking is prohibited by part 252 of this title unless the “No Smoking” passenger information signs are lighted during the entire flight, or one or more “No Smoking” placards meeting the requirements of § 25.1541 of this chapter are posted during the entire flight. If both the lighted signs and the placards are used, the signs must remain lighted during the entire flight segment.

(b) No person may smoke while a “No Smoking” sign is lighted or while “No Smoking” placards are posted, except as follows:

(1) *On-demand operations.* The pilot in command of an aircraft engaged in an on-demand operation may authorize smoking on the flight deck (if it is physically separated from any passenger compartment), except in any of the following situations:

(i) During aircraft movement on the surface or during takeoff or landing;

(ii) During scheduled passenger-carrying public charter operations conducted under part 380 of this title;

(iii) During on-demand operations conducted interstate that meet paragraph (2) of the definition “On-demand operation” in § 119.3 of this chapter, unless permitted under paragraph (b)(2) of this section; or

(iv) During any operation where smoking is prohibited by part 252 of this title or by international agreement.

(2) *Certain intrastate commuter operations and certain intrastate on-demand operations.* Except during aircraft movement on the surface or during takeoff or landing, a pilot in command of an aircraft engaged in a commuter operation or an on-demand operation that meets paragraph (2) of the definition of “On-demand operation” in § 119.3 of this chapter may authorize smoking on the flight deck (if it is physically separated from the passenger compartment, if any) if—

(i) Smoking on the flight deck is not otherwise prohibited by part 252 of this title;

(ii) The flight is conducted entirely within the same State of the United States (a flight from one place in Hawaii to another place in Hawaii through the airspace over a place outside Hawaii is not entirely within the same State); and

(iii) The aircraft is either not turbojet-powered or the aircraft is not capable of carrying at least 30 passengers.

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Issued in Washington DC on June 2, 2000.

Jane F. Garvey,
Administrator.

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